UNITED
NATIONS

CERD

International Convention on
the Elimination
of all Forms of
Racial Discrimination

Distr.
GENERAL

CERD/C/337/Add.5
5 July 1999

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Fourteenth periodic reports of States parties due in 1998

Addendum

FRANCE*

[12 March 1999]

---

* This document contains the twelfth, thirteenth and fourteenth periodic reports of France, submitted in one document, due on 27 August 1994, 1996 and 1998 respectively. For the ninth, tenth and eleventh periodic reports of France, presented in one document, and the summary records of the meetings at which the Committee considered these reports, see documents CERD/C/225/Add.2 and CERD/C/SR.1014-1015.

The annexes submitted by France may be consulted in the files of the secretariat.

GE.99-42687 (E)

CONTENTS


| | Paragraphs | Page |
|---|---|---|
| I. GENERAL | 1 - 80 | 4 |
| A. Policy pursued since 1993 | 1 - 64 | 4 |
| 1. Prevention and suppression of racism and xenophobia | 1 - 16 | 4 |
| 2. Policy on the entry, sojourn and removal of aliens | 17 - 22 | 6 |
| 3. Right of asylum | 23 - 28 | 8 |
| 4.. Amendments to the legislation governing nationality | 29 - 39 | 9 |
| 5. Social policy on asylum-seekers and refugees | 40 - 47 | 10 |
| 6. Policies to combat exclusion | 48 - 56 | 12 |
| 7. Urban policy | 57 - 64 | 15 |
| B. Demographic composition | 65 - 69 | 16 |
| 1. Population census | 65 - 66 | 16 |
| 2. Aliens holding residence permits | 67 - 69 | 16 |
| C. Legal situation of the overseas departments and territories and the territorial communities of Mayotte and Saint Pierre and Miquelon | 70 - 80 | 17 |
| II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION | 81 - 217 | 19 |
| A. Article 2 | 82 - 118 | 19 |
| 1. Criminalization of racist acts | 82 - 100 | 19 |
| 2. Departmental anti-racism bureaux | 101 | 23 |
| 3. Other action by the Ministry of the Interior and the Ministry of Defence | 102 - 107 | 23 |
| 4. Mediation | 108 - 109 | 24 |
| 5. The role of the National Consultative Commission on Human Rights (CNCDH) | 110 - 118 | 25 |

CONTENTS (continued)


| | Paragraphs | Page |
|---|---|---|
| B. Article 3 | 119 - 120 | 27 |
| C. Article 4 | 121 - 151 | 27 |
| 1. Provisions of the Penal Code making all propaganda promoting racial discrimination an offence punishable by law | 121 - 122 | 27 |
| 2. Legislative provisions on freedom of the press | 123 - 147 | 27 |
| 3. Other legislative provisions to combat racist propaganda | 148 - 151 | 33 |
| D. Article 5 | 152 - 179 | 34 |
| 1. The exercise of political rights, including the rights to participate in elections, to vote and to stand as candidate | 155 - 156 | 34 |
| 2. Other civil rights | 157 - 165 | 35 |
| 3. Economic, social and cultural rights | 166 - 179 | 36 |
| E. Article 6 | 180 - 191 | 39 |
| 1. The right to reparation | 180 - 188 | 39 |
| 2. Effective access to the courts | 189 - 191 | 40 |
| F. Article 7 | 192 - 217 | 41 |
| 1. Teaching guidelines and the prevention of racial discrimination | 193 - 204 | 41 |
| 2. Teaching arrangements for foreign pupils: the quest for social integration | 205 - 217 | 44 |
| List of annexes | | 47 |

# I. GENERAL

## A. Policy pursued since 1993

### 1. Prevention and suppression of racism and xenophobia

1. Since 1993, the French Government has continued its policy of eliminating racial discrimination, in accordance with the commitments undertaken when it ratified the Convention. This policy has given rise, on both the national and the European level, to initiatives intended to reinforce preventive mechanisms and suppress racism and xenophobia.

#### (a) Measures at national level

2. The new Penal Code entered into force on 1 March 1994 (Acts of 22 July 1992, 16 December 1992 and 19 July 1993). It brings together a large number of provisions directed against racism and xenophobia. The circulation of racist and xenophobic messages continues to be covered by the Act of 29 July 1881 on press freedom, which has been amended several times since that date.

3. French anti-racist legislation as a whole will be discussed in the commentary on articles 2 and 4 of the Convention. However, it should be pointed out here that the Ministry of Justice has published a "*Guide to anti-racist legislation*" for specialists in the field and the wider public. This document, which is highly accessible and much acclaimed by human rights organizations, was published in January 1995 and updated in December 1997 for the European Year Against Racism (see below, paras. 7-16).

4. The Guide (see annexes) in its present form consists of some 30 pages, divided into the following sections:

- the development of national and international law;
- a general description of French legislation;
- a definition of prohibited acts and behaviour, with a table summarizing violations, punishments and penalties;
- the rights of victims and courses of action available, including action by associations.

5. Among the more recent measures worth mentioning is the publication on 16 July 1998 of a Ministry of Justice circular on action against racism and xenophobia (see annexes).

6. Observing that racially-motivated crime continues to affect social relations and strike at the essential values of our civilization, the Minister of Justice urged procurators-general and public prosecutors to greater vigilance in recording violations and greater efficiency in proceedings, particularly with regard to racist propaganda and refusals of service on racist grounds. This injunction is a reminder of the importance attached by the French Government to combating the development of racism and xenophobia.

The Ministry of Justice has also emphasized the need to tailor penal policy to local circumstances (participating in the departmental anti-racism bureaux, see 2.2 below) and strengthen collaboration with anti-racist organizations.

**(b) Measures at European level**

7. Over the course of 1993, following acts of violence motivated by racism and xenophobia, action was taken in the Council of Europe and the European Union to develop and strengthen the struggle against racism and xenophobia.

Council of Europe

8. The heads of State and Government who met at Vienna on 8 and 9 October 1993, reaffirming their determination to combat all forms of racism and xenophobia, proposed a plan of action based on the creation of a new body, the European Commission against Racism and Intolerance (ECRI). ECRI is responsible for examining and evaluating the legislative, political and other measures taken by States to combat racism and stimulate action at local, national and European level. It conducts detailed studies into the situation in each member State and makes recommendations; it will shortly set up a database to permit more efficient processing and use of the mass of information it has received since it was founded. At the 613th meeting of ministerial delegates to the Council of Europe (18 and 19 December 1997), its mandate was extended for a period of five years.

9. The Council of Europe also launched, on 10 December 1994, the European Youth Campaign against Racism, Xenophobia, Anti-Semitism and Intolerance, with the slogan "*All Different, All Equal*", a campaign to which the French Ministry of Youth and Sports has actively contributed.

European Union

10. As the result of an initiative at the 63rd Franco-German summit in Mulhouse, 30-31 May 1994, the European Council, meeting in Corfu on 24-25 June 1994, set up a Consultative Commission against racism, xenophobia and intolerance, to make recommendations on the development of cooperation between the Governments and social agencies concerned.

11. The desire to shape an overall European Union strategy against racism led to the foundation of a European Monitoring Centre on Racism and Xenophobia (Council Regulation dated 2 June 1997) based in Vienna, with the task of providing the Community and its member States with reliable information on racism and xenophobia so they can take appropriate measures. The principal functions of the Centre are collecting and analysing information, conducting research and scientific inquiries, issuing opinions, publishing an annual report and setting up a European racism and xenophobia information network (RAXEN). The Monitoring Centre at Vienna is headed by Mr. Jean Kahn of France, who is also the Chairman of the National Consultative Commission on Human Rights.

12. The European Council also adopted, on 15 July 1996, a Joint Action on racism and xenophobia whereby its member States committed themselves to effective judicial cooperation over violations involving incitement to

discrimination, violence or racial hatred; publicly defending, for a racist or xenophobic purpose, of crimes against humanity and human rights violations; public denial of the crimes defined in the Charter of the International Military Tribunal at Nuremberg; public dissemination or distribution of tracts, pictures or other material, containing expressions of racism or xenophobia; and participation in the activities of groups, organizations or associations involving discrimination, violence or racial, ethnic or religious hatred.

13. States were called upon to take appropriate measures to seize and confiscate items purveying racist propaganda, respond appropriately to requests for judicial cooperation, and simplify exchanges of information among authorities in different countries, etc. The European Council will now have to evaluate how the member States have complied with these commitments.

14. Mention should also be made of a resolution proclaiming 1997 the "*European Year against Racism*", adopted on 23 July 1996 by the European Council. The National Consultative Commission on Human Rights was chosen as France's national coordinating committee for the Year.

15. Two main objectives were set for the Year: communication and exchanges of experience. The communication aspect enabled each member State to organize commemorative events and information campaigns. Exchanges of experience took the form of expert seminars and lectures aimed at a broader audience. Activities were conducted for the most part by NGOs, but a number of major events involving the member States were staged during the year on topics of common interest, with more direct support from Governments.

16. Two international meetings were held in France as part of the Year: a symposium on crimes against humanity, held at the Court of Cassation on 13 June 1997, at the initiative of the National Consultative Commission on Human Rights and attended by leading figures such as Mr. Boutros Boutros-Ghali, the former Secretary-General of the United Nations; and a European seminar, held in Paris on 26 and 27 February 1998 at the initiative of the Ministry of Justice, on legal and judicial means of combating the spread of racism and xenophobia within the European Union.

### 2. Policy on the entry, sojourn and removal of aliens

17. French immigration policy is based on two sets of considerations: first, the need to control immigration flows and maintain public order; second, respect for fundamental human rights, especially human dignity, in keeping with France's international commitments in the field of human rights.

18. The source of legislation governing aliens' entry into and sojourn in France is an ordinance dating from 1945. Amended in 1993 by the Acts of 24 August and 30 December, and later by the Act of 24 April 1997, this has more recently been revised in an Act passed by Parliament on 8 April 1998 and promulgated on 11 May 1998, following a decision handed down on 5 May 1998 by the Constitutional Council (Official Journal, 12 May 1998). The legislative trend on aliens in France over the last 10 years or so reflects a concern to provide more effective action against illegal immigration, rackets and

disturbances of the peace, but also a stricter regard for the guarantees due to foreigners subject to removal orders and a greater concern for stability in the law governing sojourn stability in France.

19. Mention should be made in this regard of the influence of legal precedents set by the Constitutional Council and the Council of State on the basis of general principles of French legislation and the rights and guarantees set forth in international instruments. The Constitutional Council has confirmed that, although aliens cannot enjoy equality with French nationals, they do have fundamental rights deserving of protection (see rulings handed down on 22 January 1990 and 13 August 1993).

20. Constitutionally-recognized rights and freedoms explicitly mentioned by the Council include *"individual freedom and safety, including the freedom to come and go, marry and lead a normal family life"*. In addition, *"foreigners enjoy the right to social protection provided they reside in France on a stable and regular basis"*. Finally, *"they must be able to seek redress so as to ensure that these rights and freedoms are safeguarded"*.

21. The Council of State has also played an important part in affirming the right of aliens to lead a normal family life (Council of State, 26 September 1986, Information and Support Group for Immigrant Workers) and in recognizing the principle of the right of residence for asylum-seekers (Council of State, 13 December 1991, Dakoury). The right to family reunion is now enshrined in law and cannot be denied except on the limited grounds listed in the legislation. The same is true of the right of asylum.

22. The Act of 11 May 1998 amending the ordinance dated 2 November 1945 governing entry and sojourn of aliens is based essentially on four series of considerations:

Simplifying the formalities required of aliens at borders and thereafter providing easier access to French territory;

Improving the procedures for aliens wishing to stay in France for some time (easier acquisition of residence permits for spouses of French citizens, aliens with demonstrable personal and family ties in France and aliens with medical problems whose expulsion would have serious consequences; the rules governing family reunion have also been eased;

Offering stronger legal safeguards for aliens. A large proportion of visa rejections must now be justified; the time limit for seeking a stay of a prefectoral deportation order has been increased from 24 to 48 hours or to seven days, depending on the circumstances; protections against removal have been extended to aliens who entered France before the age of 10;

Extending family immunity from criminal penalties for abetting an irregular stay; the administrative ban from French territory has been eliminated and guarantees for aliens held in detention have been strengthened. Finally, with a view to placing French nationals and aliens on an equal footing, the law guarantees aliens legally present in France access to non-contributory welfare benefits.

### 3. Right of asylum

23. Two major developments have recently taken place in asylum policy: a marked increase in the number of asylum-seekers and the adoption of new legislative provisions.

#### (a) Increase in the number of asylum-seekers

24. The number of applications for asylum submitted to the French Office for the Protection of Refugees and Stateless Persons (OFPRA), the body responsible for applying the Geneva Convention, increased by 23 per cent in 1997, from 17,405 in 1996 to 21,416 in 1997. The increase was especially marked among Bulgarian, Albanian, Bangladeshi, Rwandan, former Soviet, Pakistani, Algerian and Sri Lankan asylum-seekers. Romanian, Chinese, Sri Lankan and Turkish asylum-seekers remain the most numerous.

25. A growing proportion of asylum-seekers do not meet the definition of refugee as given in the Convention relating to the Status of Refugees (Geneva Convention). Among 24,167 cases up for decision in 1997, refugee status was accorded in only 17 per cent (19.6 per cent in 1996). This shows that a growing number of economic immigrants are resorting to asylum procedures. However, the figure cited is an average covering a large variety of situations, and refugee status is granted to well over 50 per cent of applicants of certain nationalities (from Rwanda, Afghanistan and the Islamic Republic of Iran, in particular).

#### (b) New legislative provisions

26. The Act of 11 May 1998 strengthened the right of asylum in four principal areas. It brought together the various legislative provisions governing asylum under a single law (Act of 25 July 1952 relating to OFPRA), by transferring the provisions on temporary residence for asylum-seekers previously found in the ordinance of 2 November 1945. OFPRA's mandate, which had been limited to the Geneva Convention, has been expanded. The new provisions, concerning *"constitutional asylum"*, allow OFPRA to grant refugee status to persons *"persecuted for their pursuit of freedom"*, even when the State authorities are not responsible for the persecution or it is based on reasons other than race, nationality, religion, political opinion or membership of a social group, as required by the Geneva Convention.

27. Apart from the protection provided by OFPRA, the Minister of the Interior may after consulting the Minister for Foreign Affairs grant territorial asylum, under conditions consistent with the national interest, to an alien who is able to prove that his life or freedom is threatened in his country or that he would be exposed to treatment contrary to article 3 of the European Convention on Human Rights. The Minister may grant such protection in response to a direct application or to a proposal from OFPRA.

28. New provisions have been introduced to prevent the misuse of asylum procedures. Asylum-seekers from countries to which OFPRA applies the Geneva Convention's cessation clause will no longer be granted temporary residence

permits and related advantages while their applications for asylum are being processed. This provision applies particularly to countries in which democracy has been restored, as defined by the Office of the United Nations High Commissioner for Refugees.

### 4. Amendments to the legislation governing nationality

29. Although States parties' legislative provisions on nationality are not directly within the purview of the Convention (see art. 1, para. 2), the following general indications of recent trends in French legislation in this area may be of interest to the Committee.

30. In a general policy statement delivered on 19 June 1997, the Prime Minister stressed that France, a country based on the republican model, had grown up through a process of sedimentation and had been a melting pot giving birth to an alloy that was all the stronger for being made of many ingredients. For that reason, the Government pledged to restore the French tradition of jus soli. The Government submitted its bill to the National Assembly on 15 October 1997, and the Act was adopted on 16 March 1998 (Act No. 98-170, published in the Official Journal on 16 and 17 March 1998). The Act amends the rules governing indication of a desire to become French, which had been introduced by the Act of 22 July 1993 for children born in France to foreign parents and having lived in France for the five years before giving such an indication. Thus it mainly concerns acquisition of French nationality, but does contain other provisions, relating to the rules for attribution of the original nationality, proof of the original nationality and loss of nationality, among others. Pursuant to article 36 of the Act, it entered into force on 1 September 1998.

#### (a) Acquisition of French nationality

31. Article 2 of the Act amends article 21-7 of the Civil Code. Any child born in France to foreign parents now automatically acquires French nationality on reaching majority if he is then resident in France and has been so continuously or continually for at least five years since the age of 11. All public agencies and services, including the courts, municipal governments and educational establishments, have been asked to spread the information, to the public at large and to individuals, about these new provisions. How they are to do so is described in Decree No. 98-719 of 20 August 1998 (Official Journal of 21 August 1998, p. 12754).

32. Article 3, which amends article 21-8 of the Civil Code, gives a foreign child the option of declining French nationality within the 6 months preceding or the 12 months following his majority, provided - to avoid creating cases of statelessness - he can show he has the nationality of a foreign State.

33. Furthermore, minor children born in France to foreign parents may choose not to await majority before acquiring French nationality, but apply for nationality at the age of 16, under conditions laid down in new article 21-11 of the Civil Code. The parents of such a child born in France may apply for French nationality on their child's behalf, but only when the child has reached the age of 13 and has given his consent.

34. The conditions for acquiring French nationality through marriage have been eased: the foreign spouse of a French national may now make a declaration of intent to acquire French nationality after one year instead of two (art. 1 of the Act, amending art. 21-2 of the Civil Code).

35. The provisions concerning the effects of adoption on the acquisition of French nationality have also been amended (art. 7 of the Act, adding a new subparagraph to article 21-12 of the Civil Code), as have several provisions concerning naturalization (arts. 8, 9, 10, 11 and 15 of the Act).

**(b) Other main changes to the legislation on nationality**

36. Attribution of nationality of origin. Article 19-1 of the Civil Code stipulates that any child born in France to foreign parents who does not acquire the nationality of either of his parents under foreign law is French; a subparagraph has been added, stating that the child shall be considered never to have been French if a foreign nationality acquired or possessed by either of his parents is transmitted to him at any time during his minority (art. 13 of the Act).

37. Proof of French nationality. The first issuance of a certificate of French nationality and official documents relating to the acquisition, loss or readoption of French nationality shall be noted in the margin of the birth certificate (art. 16 of the Act, amending art. 28 of the Civil Code). The annotations may also be entered in official copies of the birth certificate or the family record booklet, at the request of the parties concerned (art. 17 of the Act, amending art. 28-1 of the Civil Code).

38. Loss of French nationality. In this area, the new Act qualifies article 25 of the Civil Code, concerning loss of nationality, by ruling loss of nationality out if the result would be to leave the individual concerned stateless. It also eliminates one ground for deprivation of French nationality: conviction for a crime carrying a penalty of five or more years' imprisonment (art. 23 of the Act).

39. Other provisions. Apart from provisions relating to national service, the new Act introduces a French identity document designed to facilitate proof of identity and travel abroad (exemption from visa requirements), to be issued to any minor born in France to foreign parents who themselves hold residence permits (art. 29 of the Act).

**5. Social policy on asylum-seekers and refugees**

**(a) Asylum-seekers**

40. Social policy on asylum-seekers entails temporary status and a waiting period, and is designed to meet the needs of assistance and relief. As a specific legal category, people applying for refugee status, asylum-seekers are granted special rights. In France today, people remain asylum-seekers for an average of six months, i.e. the time required to process their applications for refugee status. In outline, social policy on asylum-seekers is to offer communal accommodation in a reception centre or individualized assistance for each asylum-seeker.

41. Individualized assistance. In the months following his arrival in France and application to OFPRA for recognition of refugee status, an asylum-seeker may request a waiting allowance of FF 2,000 per adult and FF 750 per dependent child. This allowance, exclusively for asylum-seekers, is a one-off payment financed by the State budget. Thereafter asylum-seekers receive resources and protection through the workings of the ordinary law; minimum subsistence benefit throughout the procedure (FF 1,300 per month) and enrolment in the general social security scheme to provide basic health insurance. They may also receive assistance from the many national and other associations which work with this group, which are supported by the State.

42. Accommodation in reception centres. Accommodation in reception centres is offered as an alternative to the allowances described above: in essence, asylum-seekers' daily needs are met (food, medical care, etc.). The shortening of the asylum procedure in 1991 and the changes in asylum-seekers' employment status played a major role in the decision to make specific accommodation arrangements for them. Reception centres for asylum-seekers (58 centres offering nearly 3,600 places in January 1998) are a welfare mechanism operating on a voluntary basis at entry level. Through the administrative assistance which it is their task to provide for asylum-seekers, for example in helping them prepare their applications, they meet the general objective of social policy on asylum-seekers, which is to give them effective access to the protection afforded by the Geneva Convention.

**(b) Refugees**

43. Because of events over which they have no control, refugees must expect to live in France for the long term. Indeed, even assuming that the grounds for their refugee status disappear or that refugee status is withdrawn, their right of residence is maintained (10-year resident's card, providing residency and work authorization). Social policy is thus aimed at the smooth absorption of refugees into society. In France it focuses on two areas: first arrival, when refugees need help in finding accommodation and work and learning the language; and access to rights, where refugees settling in France must not be penalized because of their particular situation as new arrivals. In that respect, refugees with residents' cards are exempted from the residency requirements for claiming social entitlements (training, minimum subsistence income (RMI), medical assistance), and enjoy a legal status close to that of French nationals.

44. The specific mechanisms established for refugee assistance bear mainly on refugees' initial arrival and first weeks in France. The Immigrants' Aid Service (SSAE) is responsible for assistance to immigrants and in particular for managing the funds earmarked for helping them settle in. Its terms of reference do not preclude action by additional important associations, religious and other, or associations with connections to specific communities or geographical regions.

45. Refugees are also eligible for accommodation in Temporary Accommodation Centres (CPHs) financed by the State relief services. Accommodation in CPHs (33 centres offering approximately 1,170 places as of 1 January 1998) is subject to a time limit and cannot do more than serve as a preparation for life in French society for refugees when they first arrive.

46. The goal is to equip every person receiving accommodation to look after himself in the short term. In addition to their accommodation function, therefore, the centres have three main objectives: to help provide every person receiving accommodation with a sufficient knowledge of French and French society, with lodgings, and with an income. The refugees are given training to help them find a job or training in marketable skills so as to help them find their way in society: French language classes, preparatory vocational training (introduction to the labour market), theoretical training, internships in firms and practice in job-hunting techniques.

47. Refugees not housed at CPHs are eligible for the minimum subsistence benefit and general social security coverage. They can collect the benefit for a six-month period, renewable on review of their situation. Eligibility ceases when the recipient finds a job. Refugees are also eligible, with no residency requirements to apply for the minimum subsistence income (RMI) and the various family allowances. The Ministry of Employment and Solidarity has also set up groups with vocational aims, with financial assistance from the European Social Fund.

### 6. Policies to combat exclusion

48. Persistent economic and social difficulties in the 1980s led to the establishment, of a wide variety of measures: for example the RMI, introduced in 1988, guaranteed everyone over the age of 25 a minimum income. For the last 15 years, however, whereas average income has increased by 33 per cent, the proportion of households living below the poverty threshold (50 per cent of average income) has remained the same, i.e. 15 per cent. For that reason, on 4 March 1998 the Government adopted a programme of action to combat exclusion, which consists of an overall policy to prevent and combat exclusion and mobilizes legislative, regulatory and financial means towards that objective (FF 51.4 billion over a three-year period, including FF 38.3 billion financed by the State. In this context, the Act of 29 July 1998 on action to combat exclusion is to be supplemented by four more pieces of legislation concerning access to rights, improved relations between the administration and the public, the establishment of universal health insurance, and a housing law.

49. The substance of the Act, which is being sponsored by the Ministry of Employment and Solidarity, evolved from wide-ranging cooperation among ministries (15 or so) and the associations concerned. The Act has three objectives:

abandoning the welfare approach and promoting access by all to fundamental rights, using appropriate means rather than creating specific, and necessarily artificial, entitlements;

preventing exclusion and addressing problems as far upstream as possible;

improving the functioning and coordination of institutions and actors, particularly in dealing with emergencies.

**(a) Improving access to fundamental rights**

50. Better access to everyday facilities and services. Several provisions seek to provide excluded persons with representation before the welfare agencies where decisions concerning them are taken (arts. 2, 31, 150). Others are aimed at helping people in difficulties to participate in social and political affairs: allowing job-seekers to join trade unions; assigning homeless people a national address so that they can exercise their right to vote and obtain legal aid (arts. 81 and 82).

51. Access to employment. The chapter on access to employment is designed to help people in difficulties prepare for long-term entry into the labour market. The principal measures include:

Support in developing plans for entering the labour market: right to services, vocational assessment and vocational guidance (art. 4); the TRACE (Access to Employment) system, which offers young people in difficulties the opportunity to follow an 18-month programme preparing them for employment (art. 5);

Use of assisted contracts: employment-solidarity contracts (art. 7), consolidated employment contracts (CECs) (art. 8);

Restructuring of entry-level hiring by economic sector (arts. 11, 12, 13 and 16);

Other mechanisms intended specifically for people in difficulties, with additional means of financing for functional literacy campaigns and expansion of ACCRE (assistance for business start-ups by unemployed people).

52. Right to housing. The accent here is on three aspects:

Revision of the Act of 31 May 1990 (Besson Act) on housing for the disadvantaged (arts. 32, 36, 40);

Incentives to increase the housing supply (arts. 51, 49, 42-43 and 52);

Reform of the system for assignment of subsidized housing (arts. 55 and 56).

53. Preventive measures and access to health care.

A programme to provide the least well-off with access to preventive measures and health care to be established in each region;

More effective action to combat the health problems related to financial insecurity and an increase in preventive health care, especially at the pre-primary level;

Public and private hospitals to set up full-time services providing access to health care for the needy.

54. A separate law, the substance of which is under study, is expected to introduce universal health-care coverage and free supplementary coverage, so as to provide the least well-off with access to care.

**(b) Preventing exclusion**

55. Prevention is a key element of the Act, which provides for the following:

Tightening the law on household over indebtedness (Consumer Code): arts. 86, 87 and 88, 92, 93 and 94 (introducing "*civil bankruptcy*" whereby debts can be cancelled under certain conditions);

Preventing exclusion by enabling people to remain in their own homes, i.e. substituting a social work approach for law enforcement. Other measures are aimed at improving living conditions (e.g. preventing lead poisoning);

Guaranteed minimum assistance for all: in the event of seizure of assets, for example, the Act stipulates that the resources needed for the person's recurrent expenditure must be held back, and that these cannot be lower than the monthly minimum subsistence income (RMI). Several allowances have been indexed to inflation and/or made exempt from attachment. In addition, the needy are now entitled to "*community assistance*" to remain connected to the water supply, energy and telephone service. Finally, municipal governments and certain approved bodies will be able to distribute personalized assistance cheques (CAPs) to supplement legal welfare;

Access by all to education and culture (arts. 140, 142 and 143), in addition to the re-introduction of secondary school scholarships.

**(c) More effective policy to combat exclusion**

56. This entails:

Updating the training arrangements for social workers;

Reforming the social and medical institutions active in combating exclusion;

Getting to know the population groups in difficulties and evaluating the policies intended to help them: establishing a national poverty observatory, submitting biennial government reports to Parliament assessing the implementation of legislation. Special reports need to be issued in several fields, for example the situation of French nationals from abroad when faced with exclusion.

### 7. Urban policy

From action to combat exclusion to integration

57. The Inter-ministerial Committee on Urban Affairs (CIV), meeting on 30 June 1998 under the chairmanship of the Prime Minister, noted that an essential goal of urban policy, beyond combating exclusion, was to bring democratic life into a new era. One of the challenges of urban policy is to help re-establish the social compact. It should, in particular, restore the function of public service as a means of becoming part of society while reaffirming that membership of society brings with it both rights and obligations. Everyone, regardless of origin, place of residence and social status, must feel he belongs to the same community, by circumstance and by destiny. The city must become the setting for better integration of groups from a wide variety of backgrounds, counteracting the xenophobic trends which distort democracy.

Membership of and participation in society

58. From the onset of this policy, conducted by the Inter-ministerial Authority on Urban Affairs (DIV), public participation has been a key theme of studies on urban social development. Encouragement is given to activities involving the population in their city's development: campaigns by associations and educational projects to maintain social bonds, efforts to mobilize public services and the municipal and State authorities to deal with environmental problems and living conditions, mediation services and neighbourhood committees.

59. It should be emphasized that a prerequisite for effective action, but over and above that the political goal of the nation's efforts to help neighbourhoods in difficulty, must be to seek to involve the population in projects for the development of their cities. Thus before the project development stage people are asked to say what they think about the priorities chosen for action on their behalf and to provide strong backing for their initiatives. The State will henceforth refuse to sign any contract in which the actual conditions for public participation are not specifically defined.

Access to rights through action to combat discrimination

60. Access to rights is a means of combating discrimination. Awareness of one's own rights is an effective means of upholding the principle of equality and combating discrimination. French departments currently have legal aid services attached to the courts of major jurisdiction, which are responsible for assessing the need for access to rights and implementing policy in this area, in part by financing the structures (associations) that provide advisory assistance.

61. The bill on access to right and out-of-court settlements passed by the National Assembly in first reading on 29 June 1998 extends these departmental services' scope of action to include receiving applicants, providing information about rights, especially to disadvantaged groups, and out-of-court settlement methods. The new legislation should thus facilitate recognition of everyone's rights and combat marginalization.

62. In difficult circumstances, urban policy has provided backing to the tune of over 400 million francs per year for associations which have been setting up outreach and solidarity networks to combat all forms of discrimination, including racial discrimination. These networks have given rise to initiatives in the field which attest to the mobilization and know-how of many different partners.

63. Various elements of the State apparatus, including the Inter-Ministerial Agency for Urban Affairs, have remarked on the value of the work performed by the Agency for the Development of Intercultural Relations (ADRI), "*encouraging and arranging contacts and exchanges between the different entities involved in integration and urban policy*". One outcome of its efforts in 1998 were workshops on local integration which featured pilot experiments in combating discrimination in access to employment and culture.

64. It has been decided to bring more consistency to these activities by allowing ADRI to register as a joint public venture (*groupement d'intérêt public*, GIP) and develop the resources and units necessary to combat discrimination through the use of new technology (Internet sites, for example).

## B. Demographic composition

### 1. Population census

65. In March 1990, when the last census was conducted, metropolitan France had 56.5 million inhabitants, of whom 3,596,602, or 6.3 per cent, were aliens. The working population numbered 25.3 million, of whom 1,620,189, or 6.4 per cent, were aliens. Compared with the figures from the census conducted eight years earlier, these numbers indicate that the alien population is stable.

66. As an adjunct to this, it should be mentioned that according to the employment survey conducted every year by the National Institute of Statistics and Economic Research (INSEE), there were 2,836,136 aliens aged 15 or over in France in March 1996, of whom 1,604,674 were in employment. The population of the overseas departments (Guadeloupe, Martinique, French Guyana and Réunion) amounts to 1,459,000. At the time of the 1990 census, there were 64,378 aliens in these departments. The population of the overseas territories (New Caledonia, French Polynesia, Wallis and Futuna) and territorial communities (Saint Pierre and Miquelon and Mayotte) amounts to 569,000. Non-metropolitan France thus accounts for a little more than 3 per cent of the French population.

### 2. Aliens holding residence permits

67. Only aliens aged 18 and over (16 if in professional employment) being required to have residence permits, the figures below do not include minors, the exact number of whom is not known, or illegal aliens.

68. As of 31 December 1986, the number of aliens holding valid residence permits was 3,231,891. Of these, 1,824,763 were male and 1,407,128 were female.

69. The breakdown of residence permits by major nationalities was as follows:

| | |
|---|---|
| Portuguese : | 592,745 |
| Algerian: | 550,865 |
| Moroccan: | 446,911 |
| Italian: | 226,377 |
| Spanish: | 189,018 |
| Tunisian: | 162,262 |
| Turkish : | 159,340. |

### C. Legal situation of the overseas departments and territories and the territorial communities of Mayotte and Saint Pierre and Miquelon

70. The application of the Convention in the overseas departments and territories is governed by the general principle that international texts apply there as in metropolitan France, provided that these territories are not expressly excluded. There is in fact no provision excluding the overseas territories from the scope of application of the Convention.

71. French overseas citizens enjoy the rights and freedoms proclaimed in the Convention, which applies unconditionally in the overseas departments and territories and the territorial communities of Mayotte and Saint Pierre and Miquelon. This equal treatment does not preclude due regard for a number of specific features. The overseas territories have a special status within the French Republic and, out of respect for the identity of each, their administrative and legal systems display certain special features.

72. Guadeloupe, Martinique, French Guyana and Reunion have been overseas departments since they were made so by the Act of 19 March 1946. Law enforcement in the overseas departments is shaped by the principles of assimilation and adaptation. The laws of the Republic automatically apply as in metropolitan France. At the same time, the legal systems and administrations of these departments may be modified as required by local circumstances. When that happens, the general or regional councils of the departments must be consulted. Adjustments are made, for example, in the economic and social spheres (taxation, employment, etc.).

73. New Caledonia, French Polynesia, Wallis and Futuna and the French southern and Antarctic territories are overseas territories, where the legal system is governed by the principles of special legislative provision and distinctive administration. Each territory is governed by its own statutory law. Any change in regime requires consultation with the territorial assemblies.

74. Under the principle of "special legislative status" that operates in the overseas territories, the laws of the mainland are not automatically applicable but must be explicitly made applicable or extended under subsequent provisions. This principle makes it possible to take account of local conditions.

75. The law provides that, in addition to the powers reserved to the State, the elected assemblies of the overseas territories have direct responsibility for running their affairs. Within their recognized areas of competence, therefore, they may enact directly enforceable legislation without the approval of the central authorities.

76. In French Polynesia and New Caledonia, the State has only limited jurisdiction. The territories are responsible for such important areas as social welfare, health, education, cultural affairs, economic development and taxation. The territorial assemblies are required to be consulted on legislation that also applies to the overseas territories or affect their particular administrative arrangements. Such legislation must also be published locally.

77. The institutional Act of 12 April 1996 on the autonomy of French Polynesia gave the territory increased autonomy.

78. The regime for Wallis and Futuna confers certain powers on the local authorities. Under statutory law, the customary authorities are members of the administration. The territory is divided into three administrative districts, corresponding to the three kingdoms (Wallis, Sigave and Alo).

79. The current regime for New Caledonia established by the Act of 9 November 1988, which gave legal effect to the Matignon Accords, is shortly to be modified. An agreement on the future of New Caledonia was signed in Nouméa on 5 May 1998 by representatives of the two main political groupings in the territory and Government representatives. The Agreement entailed amendment of the Constitution, which was effected by the Constitutional Act of 20 July 1998. It was then put to the population groups concerned in New Caledonia. A referendum took place on 8 November 1998. The "*Yes*" vote won, and a new Constitution Act will be promulgated in Parliament early in 1999, after consultations with the deliberative assembly of New Caledonia. This Act will give legal effect to the provisions of the Nouméa Accord; inter alia, it will provide for a gradual and irrevocable transfer of power to New Caledonia; establish New Caledonian citizenship with the right to vote in elections for local institutions; and confirm the customary status of Kanaks.

80. Saint Pierre and Miquelon and Mayotte are territorial communities governed by their own statutory laws. In Saint Pierre and Miquelon law enforcement is governed by the principle of legislative assimilation. Apart from matters that fall within the General Council's jurisdiction (customs and excise, town planning and housing), new legislation is automatically applicable. The General Council must be consulted about bills containing

special provisions for the archipelago and on draft regional cooperation agreements or international agreements relating to the economic zone. In Mayotte, the application of the law follows the principle of special legislative provision. Consultation with the Mayotteans on the final status of the island is due to take place in 1999. It should then be possible to consider their request for definitive status within the French Republic.

## II. INFORMATION RELATING TO ARTICLES 2 TO 7 OF THE CONVENTION

### A. Article 2

81. The full range of France's legislation against racism, including the Press Act, has already been described in earlier periodic reports. It is clearly presented in the Guide to anti-racist legislation, attached as an annex. Nevertheless, mention should be made of the main innovations since the introduction of the new Penal Code in 1994.

#### 1. Criminalization of racist acts

82. The new French Penal Code, which entered into force on 1 March 1994, defined a series of offences in a veritable battery of legislation against any racially discriminatory act or practice. The discussion under article 2 of the Convention will concern the criminalization of racist conduct; while criminalization of racist propaganda in its various forms will be dealt with under article 4. The discussion will first focus on the most serious offences and then, in succession, on discrimination, aggravated desecration of cemeteries and the prohibition on computerized storage of information on race.

##### (a) Crimes against humanity

83. Crimes against humanity, which rank as the most important of the crimes and offences against the person (Book II of the Penal Code), are divided into four offences that may be racially motivated.

84. Genocide is defined in article 211-1 of the Penal Code. The definition of genocide is broader than the one contained in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, since the Penal Code protects not only groups of victims defined on national, ethnic, racial or religious grounds, but also groups singled out on "*any other arbitrary grounds*".

85. Other crimes against humanity are defined in article 212-1 of the Penal Code. These include deportation, enslavement or systematic, arbitrary, mass execution, the abduction and subsequent disappearance of persons, torture and inhuman acts motivated by politics, philosophy, race or religion and carried out as part of an organized campaign against a section of the civilian population.

86. Aggravated war crimes are described in article 212-2 of the Penal Code. Under this definition, the acts covered by article 212-1 are punishable as crimes against humanity when committed in time of war as part of an organized

campaign against those fighting against the ideological system in whose name crimes against humanity are being perpetrated. This provision is intended to cover armed forces fighting against other armed forces in the service of a racist ideology.

87. Plotting or conspiring to commit crimes against humanity is described and made punishable under article 212-3 of the Penal Code. This is a special form of criminal association, known as conspiracy in Anglo-Saxon law and in international law as plotting (as defined in the Charter of the International Military Tribunal of Nuremberg).

88. With regard to crimes against humanity, the following points should be made:

- First, they are subject to no statutory limitation: the imprescriptibility provided for under Act 64-1326 of 26 December 1964 is confirmed by article 213-5 of the Penal Code;

- Second, such crimes are punishable by life imprisonment, including a period of up to 22 years of unconditional detention during which no modification of the sentence is authorized (Penal Code, art. 132-23);

- Third, the perpetrator of such a crime can never be absolved of criminal responsibility simply on the grounds that he was carrying out an act prescribed or authorized by legal or regulatory provisions or was acting on the orders of a legitimate authority (Penal Code, art. 213-4);

- Fourth, corporate entities can be held criminally liable for crimes against humanity (Penal Code, art. 213-4);

- Fifth, French legislation to bring domestic law into line with the statutes of the international criminal tribunals for crimes committed in the former Yugoslavia and Rwanda gave full jurisdiction to French courts to try offences falling within the subject matter jurisdiction of these two international tribunals, including the crime of genocide and crimes against humanity (Acts Nos. 95-1 of 2 January 1995 and 96-432 of 22 May 1996). Furthermore, by a judgement dated 6 January 1998, the criminal division of the Court of Cassation recognized the competence of French courts to try a Rwandan priest who was facing prosecution in French territory for acts constituting torture committed in Rwanda against Rwandan citizens at the time of the genocide in April 1994;

- Lastly, France was one of the first signatories of the Rome Statute of the International Criminal Court adopted on 17 July 1998, which will be competent to try the crime of genocide, crimes against humanity and war crimes.

**(b) Racial discrimination**

General context of the criminalization of acts of discrimination

89. Under article 225-1 of the Penal Code, discrimination is defined as any distinction made against physical persons on the grounds of origin, sex, family situation, state of health, disability, habits, political opinion, trade union activities, or actual or supposed membership or non-membership of a given ethnic group, nation, race or religion. This applies to both physical persons and corporate entities (or members of the latter, on the same basis).

90. Under article 225-2 of the Penal Code, therefore, the offences of refusing to provide goods or services; interfering in the normal exercise of any economic activity whatsoever; refusing to hire, penalizing or dismissing an individual; or placing discriminatory conditions on an offer of employment, are punishable by a sentence of two years' imprisonment and a FF 200,000 fine.

91. Proceedings are generally brought in specific cases of discrimination involving job offers drafted in clearly discriminatory terms, or denial of access to particular establishments, such as places of entertainment, on grounds of race.

92. Anti-racist organizations often report, for example, on the problems of young people of foreign origin who are refused entry to discothèques. Similarly, a major French tour operator denied people from African countries access to preferential fares on flights to Africa.

93. It is often far harder to prove allegations of refusal to provide a service, or of dismissal, and all the more so in cases of more subtle discrimination. It will be noted that the social division of the Court of Cassation, in a judgement dated 8 April 1992, found an employer's lay off scheme discriminatory because it was based on a criterion of family size whose definition varied according to the employee's origin. Generally speaking, it remains difficult to take criminal proceedings in such cases, since the accused defend their behaviour by pleading other reasons it is often difficult to refute.

Specific action to combat discrimination in the civil service

94. Rights of civil servants. Amended Act No. 83-634 of 13 July 1983 concerning the rights and obligations of civil servants provides in article 6 that "*freedom of opinion is guaranteed to civil servants*" and that "*no distinction may be made between civil servants on the basis of their political, trade union, philosophical or religious opinions, their sex, their state of health, their disability or their ethnic origin*".

95. Clients' rights. The rights and guarantees enjoyed by the clients of public services were recognized in the "*Public Services Charter*" adopted on 18 March 1992. An annual report on its implementation is made to the Prime Minister and subsequently transmitted to Parliament, together with opinions from the Council of State (Conseil d'état) and Economic and Social Council. The Charter reminds administrations and civil servants of the importance of the principle of neutrality: a secular State, impartial public

servants, and no discrimination of any kind. It emphasizes the need for even-handed provision of public services, and respect for the equal rights of clients in their dealings with the administration. Furthermore, the penalties for acts of discrimination under the aforementioned articles 225-1 and 225-2 of the Penal Code are increased, in accordance with article 432-7 of the Penal Code (three years' imprisonment and a FF 300,000 fine) if the perpetrators are in positions of official authority.

**(c) Aggravated desecration of cemeteries**

96. In the case of offences against the integrity of the person, homicide, murder, acts of violence or offences against property, such as damage, the Penal Code does not, generally speaking, consider racism an aggravating circumstance, although judges will normally take racist motives into account when determining the sentence. The legislature nevertheless considers the desecration of cemeteries a special case. This offence, which in principle carries a sentence of two years' imprisonment, is aggravated when committed on the grounds of the deceased person's actual or supposed membership or non-membership of a particular ethnic group, nation, race or religion. The penalty is then increased to three years' imprisonment and a FF 300,000 fine. Similarly, exhumation of a body, an offence normally punishable by two years' imprisonment, is subject to a sentence of five years' imprisonment if it is committed for reasons of a racist nature (art. 225-18 of the Penal Code).

97. Mention must be made of the desecration of the Carpentras cemetery. On 10 May 1990, a number of graves in the Jewish cemetery at Carpentras were found to have been damaged. A man's corpse had been exhumed and placed on a nearby tomb. An attempt had been made to decapitate the body, a mock impalement had taken place and a Star of David placed on it, clearly in order to identify the target of the offences. In a judgement of 24 April 1997, the Marseille Correctional Court sentenced two people to two years' imprisonment and two others to 20 months' imprisonment.

98. The Toulon Correctional Court has also recently tried cases of damage and desecration of cemeteries, followed by violations of the integrity of a corpse. Three persons were given unconditional prison sentences for these acts. In a judgement of 20 October 1997, the Court pointed out the offences had been motivated by "*explicit discrimination, notably on the grounds of religion and racial origin*". The accused claimed to be "*Satanists*", and therefore, the court emphasized, "*the desecration of the grave of a Catholic was no accident but a considered and explicit choice*".

**(d) Prohibition on electronic storage of racial data**

99. Article 226-19 of the Penal Code prohibits the creation or saving in electronic form, without the express permission of the party concerned, of personal information showing an individual's racial origins or political, philosophical or religious opinions, their trade union membership or personal habits. The penalty for this offence is harsh: five years' imprisonment, a FF 2 million fine.

### (e) Criminal liability of corporate bodies

100. For the majority of these offences (crimes against humanity, acts of discrimination, violations of individual rights through the use of electronic files or data processing), the French Penal Code provides not only for individual but also for corporate liability (associations, clubs, groups, etc.), which is a not inconsiderable factor in many offences of a racist or xenophobic nature. Strict conditions govern the criminal liability of corporate bodies: it applies only when offences are committed on their behalf by their organs or representatives, it being understood that criminal liability on the part of a corporate body does not preclude liability on the part of the individual persons who perpetrate or are accomplices to the offences concerned. Appropriate penalties apply: dissolution, temporary banning, confiscation, judicial supervision order, inter alia.

### 2. Departmental anti-racism bureaux

101. These bureaux, which are part of the prefectures, were set up on an experimental basis in 1990 and 1992 in six particularly sensitive departments, on the instructions of the Prime Minister. Bureaux were opened in all departments on 1 March 1993, and have since then been under the jurisdiction of the Ministry of the Interior. Instructions have been regularly issued by the Ministry since 1993, drawing prefects' attention to the value of the departmental bureaux' work. In most cases forming part of the departmental crime prevention councils, they enable State services and judicial authorities to meet elected local officials, representatives of associations involved in combating racism, and representatives of various religious groups. Their mission is to monitor racist phenomena, trigger early warning procedures when necessary, gather information on local policy on crime, encourage out-of-court settlements of disputes and suggest, in the light of local conditions, whatever measures may be helpful in reinforcing social cohesion. As part of the European Year against Racism and Xenophobia, a circular was issued on 10 December 1996 requesting prefects to convoke the departmental bureaux in order to publicize the subject at the local level.

### 3. Other action by the Ministry of the Interior and the Ministry of Defence

102. On 21 July 1995, the Ministry of the Interior sent prefects a circular emphasizing the need to build local consensus with all the partners, institutional and otherwise, in order to combat xenophobia and racism truly effectively. As part of its campaign against racial discrimination, the Ministry is also taking the following preventive measures:

- Police training in combating racism and anti-Semitism has been intensified;

- The security branch has trained more than 100 officials in surveillance of extreme right-wing groups;

- Urban police forces are improving protection for sensitive areas by stepping up neighbourhood policing.

103. Specific arrangements are made with police surveillance recommended where a community has been singled out for threats. Permanent or roving surveillance is mounted, depending on who may be at risk because of their nationality or faith; what sites may be affected (consulates or private residences, synagogues, mosques, educational establishments, residential hostels or meeting rooms, etc.); what corporate bodies (airlines, commercial establishments); and in connection with what sociocultural, religious or business events (the Eid Al-Kebir or Yom Kippur holidays, trade fairs or exhibitions, etc.).

104. As a complement to these measures, regular contacts are maintained between the police services and the representatives of the various communities involved, so as to encourage mutual understanding and reduce tension.

105. In 1997, five acts of a racist nature and three acts of violence against Jews, were reported in metropolitan France, figures that confirm the decline that has taken place since 1992. However, although violence is decreasing overall, between 1990 and 1994 the percentage of anti-Semitic acts remained unchanged at between 20 per cent and 30 per cent, peaking in 1992 at more than 38 per cent before falling below 10 per cent in 1995 and 1996. The exact figures for racist and anti-Semitic acts in recent years are as follows: 51 and 20 in 1991, 32 and 20 in 1992, 37 and 14 in 1993, 36 and 11 in 1994, 19 and 2 in 1995, 9 and 1 in 1996.

106. The national gendarmerie, under the Ministry of Defence, is also active in combating racism, anti-Semitism and xenophobia, taking measures similar to those being taken by the police within the areas where it has sole jurisdiction. The gendarmerie's flying squad may be called in to back up action by the departmental gendarmerie.

107. In the area of training, special modules for the various categories of staff have been incorporated into course programmes. Thus, auxiliary gendarmes from the reserve as well as those on active military service are sensitized to the moral and civic aspects of racism. The legal aspects are studied in the context of penal procedure (respect for the human person) and special criminal law (offences of a racist nature).

**4. Mediation**

108. The Ministry of Employment and Solidarity is also helping to combat racism by providing significant financial support to anti-racist associations. In recent years, moreover, in conjunction with the other ministerial departments concerned, it has been working on mediation to bring immigrant populations closer to institutions, prevent conflict and facilitate coexistence.

109. One such mediation initiative is the "*helping hands*" system. Women who were themselves immigrants and but are now well settled in France assist and support newly arrived women in the necessary procedures. Another experimental mediation initiative aims to help Turkish families. Started in 1996, in four departments, it involves encouraging Turkish families to take part in local life with the help of a local integration development officer.

## 5. The role of the National Consultative Commission on Human Rights (CNCDH)

### (a) Background

110. A decree by the Ministry of Foreign Affairs, published in the Official Journal of 27 March 1947, established the Consultative Commission for the codification of international law and the defence of the rights and duties of States and of human rights. Its first president was René Cassin, a Nobel Peace Prize-winner, who took an active part in drafting the Universal Declaration of Human Rights in 1948 and establishing the United Nations Commission on Human Rights, one of whose first contacts at the national level was France's Consultative Commission.

111. In its early years, the Consultative Commission contributed to the preparation of French positions on all human rights issues in international forums, particularly during the drafting of covenants and conventions. By 1952 it had four working groups and was constantly expanding its mandate up until 1976, the year René Cassin died.

112. In 1984, the Consultative Commission on Human Rights was revived with Mrs. Nicole Questiaux, a former minister and member of the Council of State, presiding. She advised the Minister for Foreign Affairs on France's efforts to promote human rights throughout the world and, in particular, within international organizations. In 1986, the Commission's mandate was extended to the domestic front and on 31 January 1989 it was attached directly to the Office of the Prime Minister. It was empowered to take up any matter falling within its jurisdiction. It was given legal status in legislation for the first time in 1990 and, on 9 February 1993, was officially recognized as an independent institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights, adopted by the United Nations. Since 18 March 1996 the president of the Commission has been Mr. Jean Kahn, who succeeded Mr. Paul Bouchet.

### (b) Composition and general powers of the CNCDH

113. The composition of CNCDH reflects a desire to establish an ongoing dialogue between the State and civil society in the field of human rights. The State (Executive) is represented on the Commission by representatives of the Prime Minister and the Ministries principally concerned. A deputy and a senator are also members of the Commission, together with members of the Council of State and the bench. The Ombudsman is also a member. Civil society is represented by delegates from 26 national associations concerned with the promotion and protection of human rights; representatives of the six confederations of trade unions; 38 distinguished individuals (representatives of the Catholic and Protestant churches, Islam and Jewry, university professors, diplomats, sociologists, lawyers, etc.); and these are joined by French experts who are members, in a personal capacity, of the international human rights bodies - the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (Mr. Louis Joinet), the Human Rights Committee (Ms. Christine Chanet), the Committee on Economic, Social and Cultural Rights (Mr. Philippe Texier) and the Committee on the Elimination of Racial Discrimination (Mr. Régis de Gouttes).

114. The Commission's mandate covers the entire field of human rights: individual, civil and political freedoms; economic, social and cultural rights; new areas opened up as a result of social, scientific and technological progress; and, following a decree dated 11 September 1996, humanitarian action.

115. In general terms, the Commission serves the dual purpose of monitoring and of proposing, both upstream of government action - while bills and draft regulations, policies and programmes are formulated - and downstream, checking to ensure that human rights have indeed been respected in administrative practice or in preventive measures. As an independent body, the Commission advises the Government, through opinions adopted only by the representatives of civil society: the representatives of the administration do not take part in the vote. The Prime Minister and members of the Government may bring matters before the Commission or it may examine issues on its own initiative. Its opinions and studies are published.

116. In 1997, for example, the Commission adopted opinions on the relaunching of the integration policy, the rights of aliens, the reform of nationality legislation, the bill on entry and sojourn of aliens and asylum, and on the harmonization of French legislation with the European Union's Joint Action concerning action to combat racism and xenophobia.

**(c) CNCDH's specific role in combating racism and xenophobia**

117. Act No. 90-615 of 13 July 1990, providing for the punishment of all racist, anti-Semitic or xenophobic acts, requires CNCDH to submit an annual report to the Prime Minister on action to combat racism and xenophobia in France on the symbolic date of 21 March, proclaimed the International Day for the Elimination of Racial Discrimination by the United Nations. Eight reports have been published so far (1990 to 1997). The latest of these is organized as follows:

(a) The first part is devoted to an assessment of racism and xenophobia:

- Statistics on racism and xenophobia (figures from the Ministry of the Interior and from the judiciary);

- Findings of a survey on the public's perception of racism;

- Study on a specific topic, in this case discrimination at work and in recruitment;

(b) The second part is a report on the European Year against Racism and Xenophobia, including an account of a symposium on crimes against humanity held on 13 June 1997;

(c) The third part is an account of CNCDH's work during the past year: opinions adopted, work in the plenary assembly and the subcommittees, and work at the international level.

118. This report is eagerly awaited, not only by non-governmental organizations, but also by administrations, which participate actively in the work of CNCDH, whose roles as adviser, watchdog and policy-maker have gradually gained in importance. For the Committee's information, the last two reports of CNCDH, for 1996 and 1997, are attached as annexes (the 1998 report will be available on 21 March 1999).

## B. Article 3

119. Since the release of Mr. Nelson Mandela in 1990, direct political contacts with the Pretoria Government, which had been suspended in 1976, have been resumed. France provided considerable support to the South African transition by offering substantial aid in the form of technical assistance missions to the transition bodies: experts seconded to various independent structures (Independent Electoral Commission, Truth and Reconciliation Commission), large participation in the international arrangements to observe the 1994 elections, and French assistance in the drafting of a new constitution.

120. The overall French cooperation effort directed towards the underprivileged black population through NGOs and the Alliance Française network has been gradually increased and redirected in line with government priorities.

## C. Article 4

### 1. Provisions of the Penal Code making all propaganda promoting racial discrimination an offence punishable by law

121. The Penal Code makes it an offence of the fifth degree to wear in public or display any uniform, insignia or emblem depicting organizations or persons found guilty of crimes against humanity. No such offence is committed if the display of the objects in question is necessary in the context of a portrayal of historical events (art. R.645-1, Penal Code). Moreover, under article 42-7-1 of Act No. 84-610 of 16 July 1984, as amended on 6 December 1993, bringing, wearing or displaying insignia, signs or symbols suggesting a racist or xenophobic ideology in a sports venue, while a sporting event is taking place or being publicly broadcast, is punishable by a fine of FF 100,000 and one year's imprisonment. The attention of public prosecutors was drawn most particularly to this matter by the Minister of Justice during the recent World Cup football championships.

122. Article 42-11 of the same Act further provides that persons convicted of an offence under article 42-7-1 are also liable to the additional penalty of being barred from one or more sports venues while sporting events are taking place for a period of up to five years.

### 2. Legislative provisions on freedom of the press

123. The Act of 28 July 1881 on freedom of the press guarantees freedom of expression and opinion subject to the observance of public order, which means that abuses of this freedom, and especially overt manifestations of racism and

xenophobia, are punishable by law. To combat the expression of racism and xenophobia while at the same time guaranteeing freedom of the press, the legislature added a number of criminal offences to the Act of 28 July 1881.

**(a) Incitement to discrimination, hatred or violence on account of origin or racial or religious backgrounds**

124. Article 24, paragraph 5, of the 1881 Act, as amended by the Act of 1 July 1972, imposes correctional penalties on "*those who, by any of the means referred to in article 23, incite to hatred or violence against a person or group of persons on account of their origin or membership or non-membership of a particular ethnic group, nation, race or religion*". The purpose of the incitement must be to encourage those at whom it is directed to adopt against the persons protected a form of discriminatory conduct prohibited by article 225-2 of the Penal Code, such as denying the rights which the person affected may claim, refusing to provide a good or service, dismissing or refusing to hire the person, etc. The incitement may also be intended to encourage among members of the public psychological or physical reactions hostile to the racial or religious groups concerned.

125. For such an offence to be punishable, the Court of Cassation requires the incitement to be explicit, as oral or written statements which are merely "*capable*" of provoking racial hatred do not fall under article 24 of the 1881 Act. By way of example, the criminal division of the Court of Cassation found the following actions to have constituted incitement to racial discrimination:

- The publication of an article which included a drawing that showed young blacks and North Africans brandishing knives and clubs, with the caption: "*Insecurity is often caused by ethnic gangs (of blacks and North Africans)*" (decision of 5 January 1995);

- The publication of an article entitled "*Plural society*", which, citing the President of the Republic as having said that "*the French nation has a profound sense of the value of having immigrants among us, where they work and work well*", related various incidents involving persons from North Africa, black Africa or the gypsy community, singled out because of their membership of a particular ethnic group, race or religion, such a tendentious presentation, even without further comment, being likely to encourage reactions of rejection in the reader (decision of 21 May 1996, Crim. Bull. 210);

- An election pamphlet making a commitment to fight immigration fiercely, calling for the invaders to be driven out immediately, denouncing French officials as accomplices or collaborators with the occupants of our land, and demanding the expulsion of foreign pupils who were disrespectful and harmful to the education of French youth (decision of 24 June 1997, Crim. Bull. 253).

126. In this latter decision, the criminal division of the Court of Cassation for the first time made an extensive interpretation of the term "*group of persons*" used in article 24 of the 1881 Act on freedom of the press, stating

that "*foreigners residing in France, who are singled out because they do not belong to the French nation constitute a group of persons within the meaning of article 24, paragraph 6*", which criminalizes incitement to discrimination, hatred or violence. This is an important step forward compared with earlier rulings, which had said that the provisions of the 1881 Act, as amended by the Act of 1 July 1972, did not cover remarks that merely single out a category of persons as "*foreigners*" or "*immigrants*" without referring expressly to their origin or membership or non-membership of a given ethnic group, nation, race or religion (see, in particular, a decision by the criminal division of 6 May 1986, Crim. Bull. 153).

**(b) Public defamation or insult on account of origin or racial or religious background**

127. These two offences were incorporated into the 1881 Act by the Act of 1 July 1972. Some legislation already existed before, of course, but it was felt to be insufficient. Previously, only the concepts of race and religion formed the basis of such defamation or insults; the 1972 Act added the concepts of ethnic group and nationality in order to deal more effectively with outbursts of racism, and allowed for the protection of a group of persons, since until then only the individual had been protected.

128. Public defamation. Such defamation, punishable under article 32, paragraph 2, of the 1881 Act, results from any allegation or imputation of specific and erroneous facts affecting the honour or esteem of a particular person or group of persons on account of race, religion or national or ethnic background. Thus, a false allegation made against a person or group of persons concerning a crime or lesser offence, or conduct contrary to morals, probity or the duties dictated by patriotism, constitutes defamation.

129. Public insult. This offence, covered by article 33, paragraph 3, of the 1881 Act, results from the use of any term of contempt or offensive expression. It differs from defamation in that defamation involves the allegation of a specific fact which can be proved to be true or false without difficulty. Defamation or insults constitute an offence only if the allegations or offensive remarks are made public by one of the means contemplated by the 1881 Act. In the absence of publicity, insults or defamation are only petty offences punishable by a maximum fine of FF 5,000 under articles R.624-3 and R.624-4 of the Penal Code.

**(c) Defending crimes against humanity**

130. This offence was incorporated in article 24, paragraph 3 of the Act on freedom of the press, by the Act of 31 December 1987.

131. As established in case law, a publication or public statement urging those to whom it is addressed to pass a favourable moral judgement on one or more crimes against humanity and seeking to justify such crimes or their perpetrators constitutes defending crimes against humanity. The crimes against humanity covered by this article are those defined with reference to article 6 of the Charter of the International Military Tribunal at Nuremberg, annexed to the London Agreement of 8 August 1945, and committed either by

members of a declared criminal organization (SS, Gestapo, Nazi Party leadership) or by any person found guilty of such crimes by a French or international court. This definition of crimes against humanity was adopted by the French legislature because in 1987 there was as yet no definition of crimes against humanity in domestic law (for details, see under art. 2, para. 1 (a)).

132. Crimes against humanity, as established by case law, include inhuman racist acts and acts of persecution which are committed systematically, in the name of a State practising a policy of ideological hegemony, against persons on account of their membership of a racial or religious community, or against opponents of the policy of that State. This concerns only crimes found to have been perpetrated during the Second World War by the criminals of the Axis, mainly Nazi Germany, and by any person in the service of those States.

133. The defence of crimes against humanity is now prohibited in the same way as defence of the ordinary crimes of murder, pillage, arson, war crimes or crimes of collaboration with the enemy.

**(d) Disputing the existence of crimes against humanity**

134. This offence is included in article 24 bis of the 1881 Act and results from the Act of 13 July 1990. The law is intended to punish any public denial of the crimes against humanity referred to above and recognized as a reality by a French or international court. The offence relates most particularly to those who seek to demonstrate that the Holocaust did not occur, since there had been no law to punish the authors of writings deemed to be "*revisionist*" or "*negationist*" who were able to give their views a racist resonance. New article 24 bis makes it possible to cover in penal law a grave manifestation of racism and vehicle of anti-Semitism.

135. It is now prohibited to challenge the existence of the Jewish genocide committed by the Nazi war criminals convicted of crimes against humanity by the International Tribunal at Nuremberg. This offence is punishable by one year's imprisonment and a fine of FF 300,000.

136. This Act has already been applied in several cases, including:

- The judgement of the Paris Correctional Court of 27 February 1998 and the decision of the Paris Court of Appeal on 16 December 1998, which convicted Mr. Roger Garaudy of disputing the existence of crimes against humanity and racial defamation, following the publication of his book Les mythes fondateurs de la politique israélienne ("Fundamental Myths of Israeli Policy") on the grounds that he had virulently and systematically disputed the very existence of the crimes against humanity committed against the Jewish community by the Nazi regime;

- The decision of the criminal division of the Court of Cassation on 17 June 1997 (Crim. Bull. 236), which pointed out that "*while the fact of disputing the number of victims of the policy of extermination in a particular concentration camp is not [as such]*

*covered by the provisions of article 24 bis of the Act of 29 July 1881, excessive understatement of that number is characteristic of the offence of disputing crimes against humanity, as provided for and punished by that article, when it is done in bad faith"* (in this particular case, the accused had distributed stickers reading: *"Auschwitz: 125,000 dead"*);

- The decision of the criminal division of the Court of Cassation on 20 December 1994 (Crim. Bull. 424), which also stated that a person accused of an offence under article 24 bis of the 1881 Act cannot plead that the prosecuting party has failed to produce the judgement of the Nuremberg International Military Tribunal of 1 October 1946 in the hearings, or that it has not been published in the Official Gazette, since no one can be supposed not to know what was said in that judgement which, in accordance with article 25 of the Charter of the International Military Tribunal, has been officially transcribed in French (the criminal division further said that the res judicata authority of a court decision derived from its definitive character, whether or not published).

137. It should be added that the criminal division, in the above-cited decisions of 23 February 1993 (Crim. Bull. 86) and 20 December 1994 (Crim. Bull. 424), had expressly stated that article 24 bis of the Press Act, concerning revisionism or negationism, was not contrary to the principle of freedom of expression as laid down in article 10 of the European Convention on Human Rights.

**(e) Procedural regime of the Press Act**

138. Offences under the Press Act are governed by a specific procedural regime. The purpose is to ensure, by rigourous observance of the applicable procedural rules, that a balance is struck between combating racist propaganda and safeguarding the freedom of opinion and expression embodied in numerous international instruments (International Covenant on Civil and Political Rights, European Convention on Human Rights) in accordance with General Recommendation XV issued by the Committee on the Elimination of Racial Discrimination in 1993.

139. The procedural formalism of the 1881 Act is characterized notably by the shortness of the period of prescription of the public right of action, which in such instances is reduced to three months. Under article 65 of the 1881 Act, the period of prescription cannot be interrupted, prior to the commencement of proceedings, unless enquiries are ordered and specific submissions made, stating and describing the offence and citing the relevant criminal laws.

140. Other rules, relating to the content of the bill of indictment (art. 50 of the 1881 Act) and to confiscations and seizures (arts. 51 and 61 of the 1881 Act), likewise demonstrate the will of the French legislature to reconcile freedom of the press with combating racist and xenophobic propaganda.

141. The Ministry of Justice has several times had occasion to remind public prosecutors of the rigour needed in the institution and follow-up of proceedings brought on the basis of the provisions of the 1881 Act. The most recent circular in this regard was issued on 16 July 1998. It reiterates the procedural requirements of the 1881 Act and focuses on the dissemination of racist or xenophobic pamphlets in many parts of the country, a matter that raises legal problems connected with establishing an element of publicity, which is necessary for the institution of proceedings.

**(f) The Press Act and respect for freedom of expression**

142. In several instances, people prosecuted for and convicted of offences under the 1881 Press Act have brought complaints against France before international bodies on the basis of alleged violations of the right to freedom of expression. Two cases deserve more particular attention.

The Faurisson case before the Human Rights Committee

143. A university professor until 1991, when he was removed from his chair, Mr. Faurisson stated in September 1990, in a French monthly magazine Le choc du mois ("*Shock of the Month*"), that there had been no gas chambers for the extermination of the Jews in Nazi concentration camps. Following this publication, several associations brought an action against Mr. Faurisson before the criminal courts. On 18 April 1991, the Paris Correctional Court found him guilty of "*disputing a crime against humanity*" and fined him. The Paris Court of Appeal upheld this decision on 9 December 1992.

144. On 2 January 1995, Mr. Faurisson submitted an individual communication to the Human Rights Committee at the United Nations in which he contended that the Act of 13 July 1990, known as the "*Gayssot Act*", which created the offence of disputing crimes against humanity, was contrary to the principle of freedom of expression and instruction. In its views, adopted on 8 November 1996, the Human Rights Committee notes that Mr. Faurisson was sentenced for violating the rights and reputation of others; the Committee therefore took the view that the Gayssot Act, as applied to Mr. Faurisson, was compatible with the provisions of the International Covenant on Civil and Political Rights and that there had been no violation of Mr. Faurisson's right to freedom of expression.

The Marais case before the European Commission on Human Rights

145. In September 1992, Mr. Marais published an article in the magazine Révision casting doubt on the "*alleged gassings*" at the Struthof concentration camp during the German occupation and, more generally, the use of gas chambers in other concentration camps to eliminate the Jewish community. The author of the article was convicted on 10 June 1993 by the Paris Correctional Court and fined FF 10,000 on the basis of article 24 bis of the 1881 Act. The Paris Court of Appeal upheld the judgement at first instance in a decision of 2 December 1993. On 7 November 1995, the Court of Cassation rejected the application for a review entered by Mr. Marais against the decision of the Paris Court of Appeal.

146. In the case he then brought before the European Commission on Human Rights, Mr. Marais complained in particular of a violation of his right to freedom of expression, as guaranteed by article 10 of the European Convention on Human Rights. On 24 June 1996, the Commission declared the complaint of Mr. Marais to be inadmissible as being manifestly unfounded. The Commission noted in particular that the provisions of the 1881 Act and their application in the Marais case were intended to preserve peace within the French population and that the writings of Mr. Marais ran counter to the fundamental values of justice and peace. In its findings, the Commission notes that negationism, like racism, with which it is very closely related, is a factor of exclusion that may seriously damage the fabric of society and that it is therefore legitimate, in a democratic society, to employ means of combating it effectively by opposing any attempt to restore a totalitarian ideology.

**(g) Article 14 of the 1881 Act**

147. Article 14 of the Act of 29 July 1881 allows the Minister of the Interior to prohibit the circulation, distribution and sale in France of writings and newspapers of foreign origin. Between 1992 and 1997, 10 foreign publications were banned because of their racist or anti-Semitic nature (one in 1992, five in 1993, two in 1994 and two in 1997).

**3. Other legislative provisions to combat racist propaganda**

**(a) The Act of 16 July of 1949, as amended by the Act of 31 December 1987, on publications intended for young people**

148. Article 14 of the Act of 16 July 1949, as amended in 1987, authorizes the Minister of the Interior to prohibit publications of any kind from being offered, given or sold to persons under 18 years of age if they present a danger to young people, inter alia, because of the stress laid on racial discrimination or hatred. For such publications, the measures taken by the Minister may extend to the prohibition of their public display and of any advertising to promote them.

149. The available statistics indicate that two racist and anti-Semitic publications were banned for sale to minors in 1991 and 1992, and their display and any advertising prohibited (Nationalist Tribune, in 1991, and The Anti-Jewish Manifesto, in 1992).

**(b) The Act of 10 January 1936**

150. The provisions of the Act of 10 January 1936 enable the President of the Republic to dissolve by decree any de facto associations or groupings that incite to discrimination, hatred or violence against a person or group of persons on account of their origin or their membership or non-membership of a particular ethnic group, nation, race or religion, or that propagate ideas or theories intended to justify or encourage such discrimination, hatred or violence.

151. The most recent decree of this kind dates from 4 September 1993 and concerns the Association de fidélité à la patrie alsacienne (Alsace Patriotic Association). Meanwhile, the European National Action Federation has been dissolved on three occasions (the most recent decree dating from 17 September 1987).

## D. Article 5

152. Equality before the law is guaranteed by the Constitution of the Fifth Republic dated 4 October 1958, article 1 of which states that "*[France] shall ensure the equality of all citizens before the law without distinction as to origin, race or religion*".

153. Particular note should be taken of the absence of discrimination between metropolitan France and its overseas possessions. The legislation is identical, and French overseas citizens also have the rights proclaimed in the Convention, which is applied without restriction in the overseas departments and territories and the territorial communities of Mayotte and Saint Pierre and Miquelon. The laws giving effect to these rights and freedoms are systematically extended to the overseas possessions.

154. The broad thrust of French immigration policy, which was described under article 5 in the previous report, has been discussed in the first part of the present one under the heading "*general*". As regards the rights dealt with specifically under article 5 of the Convention, the following clarifications should be added.

### 1. The exercise of political rights, including the rights to participate in elections, to vote and to stand as candidate

155. Under article 3 of the 1958 Constitution, only French nationals of either sex who have reached their majority and are in possession of their civil and political rights may vote and stand as candidates in political elections. This is consistent with article 1 of the Convention, paragraph 2 of which states that the Convention shall not apply to distinctions, exclusions, restrictions or preferences made by States Parties between citizens and non-citizens. Pursuant to the Treaty on European Union signed in Maastricht on 7 February 1992, however, any citizen of the Union residing in a member State of which he or she is not a citizen has the rights to vote and stand as candidate in municipal elections in the State where he or she is resident. To allow these provisions to take effect, a directive of the European Council dated 19 December 1994 determined the arrangements under which the rights to vote and to stand as candidate would be exercised.

156. A constitutional law dated 25 June 1992 added to the French Constitution, article 88.3 of which states that the rights to vote and to stand as a candidate in municipal elections shall be granted only to citizens of the Union residing in France, it being stipulated that such citizens cannot exercise the functions of mayor or deputy mayor or participate in the designation of Senate electors or the election of senators. Article 88.3 of the Constitution refers to an institutional Act, which has just been promulgated: the Act of 25 May 1998 was published in the Official Journal on 26 May 1998. It states that the individuals concerned are to be entered on a supplementary electoral roll.

## 2. Other civil rights

### (a) The rights to freedom of movement and to choose one's place of residence within the State

157. Aliens in France have the same liberty to come and go as French nationals and may take up residence where they wish. They are only required, pursuant to a decree dated 31 December 1947, to announce their change of permanent residence to the police station or town hall at their new place of residence. Some aliens, however, owing to their background or conduct, may not be allowed to take up residence in certain departments. Such provisions are applied only in exceptional cases and are justified by overriding considerations of public order.

158. On the subject of checks on the identity of aliens and the legality of their presence in France, the following points need to be emphasized. First, the rules on identity checks, as laid down in articles 78-1 ff. of the Code of Criminal Procedure, are not discriminatory. They apply to any person in French territory and may be enforced, under the supervision of a judicial authority, only when there are objective reasons for doing so relating to the individual's behaviour or to prevent a disturbance of public order; the authority concerned is required in every instance to document what circumstances indicative of a risk to public order led to the check being performed.

159. By virtue of the Schengen Agreement, checks may also be carried out near the country's borders or in areas open to international traffic, to ensure that people are complying with their obligations to be in possession of, carry about them and present the papers that the law requires. Such checks are justified, in the wording of Constitutional Court case law, by the particular risk of breaches and disturbances of public order attendant on the international movement of persons within such areas.

160. Besides the identity checks provided for under the Code of Criminal Procedure, the ordinance of 2 November 1945 governing the entry and sojourn of aliens specifies that *"persons of foreign nationality must be able to show the papers or documents authorizing their movement or sojourn within France"*. This cannot be considered discriminatory. It is merely the consequence of an objective difference between French nationals and aliens, the latter being subject, in full conformity with international law, to prior authorization as regards the right of sojourn, whence the need to be able to verify that papers attesting to the legality of their presence in France do exist.

161. It should be added that the Constitutional Court, in its decision No. 93.325 dated 13 August 1993, very firmly stipulated that such identity checks should be carried out *"solely on the basis of objective criteria, eschewing, with strict respect for principles and rules of constitutional rank, all discrimination of any kind among people"*. Ensuring that this instruction is followed, and punishing any breaches, are matters for the courts.

**(b) The right to leave any country, including one's own, and to return to one's country**

162. Any alien residing in France has the right to leave the country at will in accordance with article 36 of the ordinance of 2 November 1945. The Act of 11 May 1998 amending the 1945 ordinance did away with the provision added in 1993 whereby certain aliens were obliged, if national security so required, to give prior notice of their departure.

**(c) The right to marriage and choice of spouse**

163. The principle followed is of freedom to marry and, legal restrictions apart (prohibition of incest and polygamy, requirement that the spouses be of marriageable age), everyone is free to marry, to remarry after divorce or death of the spouse, and to do so at any age and with the person of his or her choice.

164. French law does not make the validity of a marriage contingent on the legality of aliens' presence in the country. It must, besides, be stressed that freedom of marriage is a principle of constitutional rank, as the Constitutional Court made plain in its decision of 13 August 1993: it is listed among the fundamental rights and freedoms of the individual, and described as a "*constituent element of individual liberty*".

**(d) The right to freedom of thought, conscience and religion**

165. France, a secular Republic, "*shall respect all beliefs*" (article 1 of the Constitution of the Fifth Republic, dated 4 October 1958). There are many illustrations of this neutrality guaranteeing respect for every individual's religious beliefs: among them may be cited article 7 of the Act of 13 July 1972 defining the legal status of members of the military, which refers to the principle of freedom of philosophical, religious and political opinions or beliefs, a principle buttressed by the principle of unrestricted freedom of worship on military sites; and the opportunity afforded to all detainees to satisfy the requirements of their religious, moral or spiritual lives, detainees being guaranteed freedom of worship through, inter alia, the agency of chaplains appointed by the Ministry of Justice.

**3. Economic, social and cultural rights**

**(a) The right to work**

General legal framework

166. The right to work applies in France to all alien wage-earners legally in the country, and to all individuals without discrimination.

167. Reference could be made, for instance, to the principle of non-discrimination set forth in article L.122-45 of the Labour Code, which prohibits any difference in treatment on grounds of "*origins, sex, customs, family situation, membership of an ethnic group, nation or race, political*

*opinions, trade-union or mutual-society activities, religious convictions*" in matters of recruitment, dismissal or disciplinary measures. The same principle of non-discrimination also governs all conditions of employment, such as wages, remuneration, working conditions and protection against unemployment.

Action to prevent illegal work

168. The Act of 11 March 1997 on firmer action to combat illegal work introduces four categories of new provisions: it institutes a new penalty for employers who fail to give prior notice of hirings; it gives a clearer and more precise definition of the offence of concealed employment; it steps up the level of mobilization and cohesiveness of the various supervisory bodies responsible for combating illegal work; and it enhances preventive efforts and increases the number of punishments applicable.

The policy of social integration through access to employment

169. Action in the fields of employment and training has been taken by the ministries concerned. In 1993, for example, to give relatively unskilled youths an easier entrance into the business world, experimental sponsoring networks were set up. They allowed the youths to be accompanied in their job searches by volunteers who enjoyed employers' confidence. The aim was to overcome some employers' reluctance to take on immigrant youths and young people from certain sensitive districts. These arrangements are to be extended country-wide, covering 10,000 young people, under the "*Agir pour l'intégration*" (Act for integration) programme launched in March 1997.

170. Every year the Social Action Fund (FAS) finances language training to help immigrants acquire the basic tools of social intercourse and, thanks to their improved mastery of French, fit more easily into society. Fifty thousand people receive such training every year. Since 1995, in a bid to improve the quality of the training given and take more account of immigrant groups' needs, the Fund has been updating its arrangements. To make it easier for people arriving under the family reunification procedure to fit into society, they have since 1994 had the possibility of taking 200 hours' worth of introductory French courses, and this has recently been extended to 500 hours.

171. The Fund is also involved in all vocational training and placement activities, paying due regard to the special difficulties faced by immigrant groups, through a three-year training programme for training and job-placement personnel. Two major principles govern this training: an intercultural approach, and proficiency in the use of pedagogical tools for language teaching. Information and training sessions are also provided for those in charge of local missions and reception, information and orientation services, who often come into contact with immigrant youths with questions about staying in the country, finding work, and nationality.

**(b) The right to form and join trade unions**

172. French law, under which liberty is the predominant principle, is in keeping with article 5 of the Convention regarding the right to form unions. This freedom is not limited by any consideration of nationality, race, colour, or national or ethnic origin. The sole requirement imposed by article L.411-4 of the Labour Code concerns the possession of civic rights and the lack of a criminal record, as specified in articles L.5 and L.6 of the Electoral Code.

173. Likewise, there is no obstacle to the freedom to join trade unions. Article L.411-5 of the Labour Code sets forth the principle in these terms: "*Any wage-earner, of whatever sex, age or nationality, may freely join the occupational trade union of his choice*".

**(c) The right to health**

174. The right of anyone in French territory to health is stated in the Constitution and spelt out in the law. The Constitution of the Fifth Republic, dated 4 October 1958, makes reference to the preamble to the Constitution of the Fourth Republic, dated 27 October 1946, which proclaims the principle that the Nation shall guarantee health protection for all.

175. Article L.711-4 of the Public Health Code requires all establishments providing public hospital services to guarantee equal access to all the treatment they provide. Such establishments are open to anyone requiring their services, and must be prepared to admit anyone, day or night, in an emergency or otherwise, or to arrange for their admission into another establishment subject to the public hospital service regulations. They may not discriminate in any way as regards the treatment they dispense to patients.

176. A circular dated 17 September 1993 on access to treatment for the least well-off lays down the conditions under which patients are to be admitted. The effect of the circular is that aliens, irrespective of their status, are taken in hand by the health system just as French citizens are, with no regard for anything but the needs dictated by their state of health.

177. As regards individuals in prison, an Act of 18 January 1994 stipulates that all detainees and their dependants must be enrolled in the social security scheme's medical insurance plan from the date of their incarceration until a year after their release. Illegal aliens, but not their dependants, are also enrolled, for the duration of their incarceration only.

**(d) The right to education and vocational training**

178. The principle that foreign children must attend school is set forth in the Act of 28 March 1882 on compulsory education, article 4 of which states that "*primary instruction shall be mandatory for children of both sexes, French and foreign, aged between 6 and 14 years*". An order dated 6 January 1959 raised the mandatory attendance age to 16. This principle, which shows how deeply committed schools are to the process of social

integration, manifests itself in the form of 929,000 foreign pupils attending French schools. In the metropolis, 9.4 per cent of the student population is foreign. In all, 8 per cent of the school-age and student population in metropolitan France is made up of aliens.

179. Training activities laid on especially for foreign pupils will be described under article 7 of the Convention.

## E. Article 6

### 1. The right to reparation

180. There exist particularly effective safeguards of the right to reparation for victims of racial discrimination in France, thanks to the rights that French criminal procedure accords to the victims of crime in general. Victims of racist crimes thus have open to them the normal courses permitted under French law: they can bring criminal proceedings directly against the perpetrator of such an offence under the traditional procedures available to any victim of a crime, which include lodging a complaint with an examining magistrate and bringing a concurrent action for criminal indemnification (*action civile*). By so doing they can both ensure that the perpetrator is brought to justice and obtain civil reparation for the injury they have suffered.

181. Reference should be made here to articles 706-3 ff. of the Code of Criminal Procedure which, in the case of injuries resulting from an offence committed in France, enable any citizen of the European Economic Community or legally present alien to obtain full reparation from a commission attached to a court of major jurisdiction. This right to full reparation is limited to serious injuries (death, permanent disability or disability lasting at least one month). A similar right exists, even if no such injury has been sustained, in the case of sexual assaults and sexual abuse of minors.

182. But it must also be pointed out that there exist courses of action specifically for victims of racist offences. Article 2-1 of the Code of Criminal Procedure permits any association that has been duly declared for at least five years and whose objectives, as set forth in its statutes, include combating racism or helping the victims of nationally, ethnically, racially or religiously motivated discrimination to exercise the rights of a party bringing an *action civile*, not only for discriminatory conduct (see above under article 2 of the Convention) but also for damage to property and personal injury inflicted because of the victim's national origins or membership or non-membership of a particular ethnic group, race or religion.

183. In the case of breaches of the Press Act, article 48-1 permits associations to exercise the rights of a party bringing an *action civile* for incitement to racial discrimination, hatred or violence, defamation or public insult. When an offence is committed against persons considered individually, however, an association will be allowed to bring such an action only if it can demonstrate that it does so with the consent of the individuals concerned.

184. Under article 48-2 of the 1881 Act, any association that has been duly declared for at least five years and whose objectives, as set forth in its statutes, include upholding the moral interests and honour of the Resistance or of deportees, may exercise the rights of a party bringing an *action civile* for the offences of disputing the existence of crimes against humanity or defending war crimes, crimes against humanity or criminal collaboration with the enemy.

185. Public prosecutors' offices are also encouraged to strengthen contacts and cooperation with anti-racist associations, whose involvement in the justice system needs to be facilitated as called for in the Code of Criminal Procedure and the 1881 Act: those most exposed to the dangers of racial discrimination or racist propaganda are not always in a position to institute legal proceedings by themselves. A Ministry of Justice circular dated 16 July 1998 invites public prosecutors' offices to increase such cooperation, because a heightened role for the anti-racist organizations may allow many incidents from daily life to be brought to light, and enable criminal proceedings to be tailored to suit.

186. It should be added that in the case of violations of the law on freedom of the press, victims have a right of reply, i.e. the right to issue a rejoinder free of charge if discriminatory information or statements about them have been published or broadcast. This is a right that can be exercised by victims, but also by victims' associations. The right of reply applies to radio and television as well as to the written word.

187. On the subject of civil reparations, it must be stressed that even if objectionable behaviour or language does not amount to a criminal offence, the victim can, on the strength of the perpetrator's misconduct and documentary evidence of the harm done, obtain damages.

188. A number of ministerial departments provide substantial financial assistance to anti-racist and human rights organizations. This supports, in particular, the legal aid that such associations provide for persons of foreign origin, and a few particularly notable anti-racism projects.

### 2. Effective access to the courts

189. The right to reparation for victims of racist and xenophobic acts would be a mere fiction were it not accompanied by an effective legal aid system. The Act of 10 July 1991 reforming the legal aid system has opened legal aid up to persons of foreign nationality. Nationals of the European Community and aliens legally and habitually resident in France are now assimilated to French nationals. The requirement of legal and habitual residence is waived when the applicant for aid is a minor, is involved in legal proceedings, or is covered by one of the procedures laid down in articles 18 bis, 22 bis, 24, 35 bis or 35 quater of the ordinance dated 2 November 1945 governing the entry and sojourn of aliens.

190. Exceptionally, legal aid may be granted to people who, although unable to satisfy the requirement of legal and habitual residence, find themselves in

circumstances that seem "*particularly worthy of interest given the subject of the dispute and the likely costs of the proceedings*". Lastly, legal aid has been extended to aliens who, when they appear before the Refugee Appeals Commission, have entered France legally and are habitually resident there or possess a residence permit valid for at least one year.

191. The Act of 10 July 1991 applies without prejudice to any international conventions to which France is party that may set aside the requirement of legal and habitual residence in the case of nationals of certain countries.

## F. Article 7

192. Bringing the problem of racial discrimination to the attention of schoolchildren is a matter both of educational curricula and, long before any teacher addresses a roomful of children, of providing the teachers with initial training in human rights as called for in article 7 of the Convention. The resources committed to providing foreign pupils with schooling also attest to the involvement of schools in the social integration process.

### 1. Teaching guidelines and the prevention of racial discrimination

#### (a) Educational curricula

Primary education

193. The curricula that came into effect at the beginning of the school year in 1995 accord special attention to civic education, affording teachers an opportunity to draw pupils' attention to the values underpinning democracy. From the first year of infant school, children become aware "*of their duty to respect others and the right to be respected themselves - their identities, personalities, physical integrity, property, and ways of expressing what they think*". Subsequent years are intended to impart "*a sense of justice, the dignity of the human person, respect for physical integrity, the Declaration of the Rights of Man and of the Citizen, social welfare and solidarity, a sense of personal and collective responsibility vis-à-vis problems relating to human rights and attacks on them (in particular, violence and discrimination)*".

194. Schools can take part in activities and special events organized by a variety of institutions. A national week against racism is organized each March by the League for Human Rights, SOS racisme, the Movement against Racism and for Friendship among Peoples, the International League Against Racism and Antisemitism, and UNESCO clubs: children take part in the demonstrations which these organizations arrange.

195. As part of the partnership in education between North and South, educational and development activities may be scheduled between October and June; they bear witness to the importance that the youth of France attach to solidarity with young people in the countries of the South. The aim of Development Cooperation Day is to make children aware, in a development education setting, of the economic, social and cultural realities of life in developing countries, the interdependence of all regions of the globe and the objective solidarity that exists between peoples.

Secondary education

196. At middle school (collège), civic studies are taught for an hour a week. Attention focuses on three points:

(a) Civics is taught by the entire teaching staff. Civics, and more broadly preparation for citizenship, is not limited to the conveying of legal and political knowledge; it must be experienced by children in their daily lives at the school.

(b) The curriculum is designed to show what civics means in practice, and is constructed, as far as possible, around case studies. The new curriculum for the first year of middle school, which states in its introduction that civics is training for the adult and the citizen, provides teachers with a perfect setting for raising questions about racial discrimination: the aim is to instruct children in human rights and citizenship, teach them the principles and values on which democracy and the Republic are founded, introduce them to institutions and laws, and help them understand the rules of social and political life. The second-year curriculum must include four hours of teaching on *rejecting discrimination* and three to four hours on the *dignity of the individual*. In the third year, five to seven hours are spent on studying human rights in Europe (*common values, national identities and European citizenship*). This curriculum came into effect for second-year pupils in the academic year 1997/98; it will apply to third-year pupils beginning in 1998/99.

(c) The study of seminal texts. The material used to teach civics in the second and third years includes the Universal Declaration of Human Rights and the Convention on the Rights of the Child.

197. At high school (*lycée*), the new history curricula place a marked focus on the human rights dimension and ethical aspects of social phenomena as pupils study questions such as the French Revolution (in the first year), the rise of totalitarian regimes and the Second World War (second year), and changes in the modern world and political and social developments in France since 1945 (final year). The first- and third-year history curricula emphasize the misdeeds of Nazism: a section is devoted to occupation and resistance in Hitler's Europe, the concentration camp system and genocide. They address the outcome of the Second World War, including the soul-searching occasioned by having to confront the existence and consequences of deportations, and stress the founding of the United Nations and its ideals, in part through a study of the Charter and the Universal Declaration of Human Rights.

198. At vocational college (*lycée professionel*), classes in human rights and preventing racism are an integral part of the new curricula leading to the vocational *certificat*, *brevet* and *baccalauréat*. These new curricula have been in effect for general technological studies since the beginning of the school year in 1996 for first-year students, 1997 for second-year students, and 1998 for students in their final year. In the case of vocational studies, they have applied since the beginning of the school year in 1992 for students preparing for the vocational *brevet*, and 1997 for those preparing for a *baccalauréat*.

**(b) Initial training for teachers**

General training

199. Although the details of how instruction in citizenship is imparted may differ from one university teacher training institute (IUFM) to the next, owing to their diversity of resources and characteristics, the general approach followed is the same. Most have opted to include the notion of "*citizenship*" and the related concerns at a variety of junctures during the training schedule, in connection with specific subjects as well as general instruction. Civics thus becomes a cause for reflection and reconsideration of course content with a view to greater integration within existing teaching courses.

200. Training for secondary-level teaching staff (philosophy, history and geography, economic and social sciences) takes account of plans to update the teaching profession and makes much of instruction in citizenship.

201. In the case of general training, activities take various forms. Given the close links between culture, language and citizenship, the teacher training institutes in Caen, Grenoble, Nancy, Nantes and Rennes tackle the question of citizenship through language in training activities focusing on "*integration, exclusion and interculturality*".

Specific training

202. The Training and Information Centres for the Children of Migrant Workers (CEFISEMs) currently employ 25 lecturers responsible for training secondary-school teachers. At the educational district (*académie*) level, these help to arrange training for teachers, organize introductory courses or training sessions at the Centres for foreign teachers coming to teach their own languages and cultures, help to set up school projects and trips, provide documentation, and maintain contacts with a variety of associations. To facilitate their task, the Centres have been gradually moved into university teacher training institutes (IUFMs) or units attached to the rectors' offices in the universities proper so that they can become more effectively involved at the level of the educational districts (*académies*) and their training centres.

Publications

203. A variety of publications such as *Migrants nouvelles* ("*Migrants News*") and *Migrants formation* ("*Migrants Training*"), and numerous issues of *Textes et Documents pour la Classe*, published by the National Centre for Teaching Documentation, also provide teachers with useful information on how foreign pupils are taught.

Courses

204. To help put all these arrangements into effect, teachers have been offered various training courses in recent years: language courses for teachers of modern languages; and nationwide or educational district-level

courses devoted to the cultures of certain foreign countries (Turkey, West African and Maghreb countries) for teachers of literature, history, geography and the plastic arts and for teacher-trainers, presented by universities, teachers who have attended European pilot projects, and natives of the countries concerned.

### 2. Teaching arrangements for foreign pupils: the quest for social integration

205. Linguistically, French schools do double duty in integrating foreign pupils socially and culturally, by helping them to learn French and by offering them the means of studying their mother tongues.

#### (a) Learning French

206. The problems that most children born in or coming young to France encounter, in French or other subjects, can be catered for through specific measures (support classes, directed studies) or under the new arrangements governing the first four years of secondary education set forth in the new Schools Contract (consolidation in the first year, then differentiated teaching provisions).

207. Special arrangements have been in effect for several years for foreign pupils newly arrived in France and learning French. In middle schools and vocational colleges, and since recently in high schools, foreign pupils can, where sufficiently numerous, be taught in introductory classes - when few in number, they can be given specific French courses - while they acquire the fundamentals of French and, if necessary, brush up their knowledge. The aim of the introductory classes is to bring pupils into the educational mainstream as quickly as possible. The classes follow a timetable which includes additional periods of French teaching, but are supposed to be non-hermetic, i.e. take as many lessons as possible, from the outset, with other pupils (art, technology, physical education and sports). To help foreign pupils follow the teaching in other classes more easily - consistent with their own educational advancement - their initial, official, enrolment in a school is accompanied by temporary enrolment for teaching purposes in an introductory class.

208. When there are too few foreign pupils to make up an introductory class, middle schools and vocational colleges arrange specific French teaching to build on the knowledge they display and the instruction they have previously undergone.

209. Significant efforts have been made in recent years to make it easier for pupils newly arrived in France to learn French. The number of introductory classes has risen from 185 in 1983 to 464 in 1996/97. It has been growing steadily since 1980, when there were 126. The number of hours of specific French teaching has risen from 100 in 1983 to 450 in 1997/98. The Ministry of National Education, Higher Education and Research provides financial backing for the production of teaching materials to ease the task of learning French for non-French speaking schoolchildren and others with an insufficient command of the language spoken in their host country.

210. A survey of the methods used by foreign pupils to learn French was published in 1992 by the International Pedagogical Research Centre (CIEP).

211. Under other projects, efforts are being made to analyse how middle schools cope with children who have had little or no schooling in their home countries, and how high schools deal with teenagers who are at the right academic level but cannot speak and write French. A *recherche-action* (teaching experiment with associated activities) currently in progress is inventorying and disseminating the teaching materials used and teaching practice followed in such classes.

212. It should also be mentioned that the new Schools Contract calls for the production of teaching materials, hard-copy documents, audio and video cassettes for family use, the aim being to make it easier for young people newly arrived in the country to settle down in school. These will be supplied by the National Educational and Vocational Information Office in Arabic, French, English, Tamil, Turkish and Soninké.

**(b) Teaching mother tongues**

213. Instruction in the mother tongue may fall under the heading of compulsory modern-language programmes or be offered as an option specifically for pupils of foreign origin. Fifteen modern languages are offered at the secondary level, including those of the main foreign nationalities represented in France (Spanish, Italian, written Arabic, Portuguese and, since three years ago, Turkish). They count for examination purposes insofar as they are taken as fully-fledged subjects (with marks counting towards the *brevet* and the *baccalauréat*).

214. Recent legislation has added to the list of modern languages that can be taken as compulsory subjects in the general or technological *baccalauréat*, with Armenian and Vietnamese being added in 1995 and Cambodian and Persian in the 1996 examinations.

215. Instruction in native languages and cultures is offered in secondary-level schools and institutions. These optional courses are taught by foreign teachers made available and paid by their own Governments under bilateral agreements with their home countries. At the primary level, some 78,000 pupils altogether took such courses in 1996/97. More active cooperation is being tried with Morocco in four departments, Nord, Yvelines, Oise and Seine-Saint-Denis, building on updated content and teaching methods that are more consistent with the French educational system. The advances made can be exploited with all France's Arabic-speaking partner countries.

216. This was the situation of teaching under bilateral agreements in middle and vocational schools in 1995/96:

| Country | No. of courses | No. of pupils | No. of teachers |
|---|---|---|---|
| Turkey | 265 | 3 925 | 108 |
| Morocco | 247 | 3 627 | 99 |
| Italy | 77 | 1 275 | 24 |
| Spain | 58 | 847 | 22 |
| Tunisia | 58 | 760 | 41 |
| Algeria | 5 | 49 | 3 |
| Total | 710 | 10 543 | 297 |

217. Arrangements are to be made among ministries to rectify certain errors that have arisen in the teaching of native languages and cultures. The underlying principles and structure of such teaching will be redefined to ensure that they are in keeping with the principles, content and procedures followed in French schools.

* * *

LIST OF ANNEXES

Act of 11 May 1998 on entry and sojourn of aliens and the right to asylum.

Ordinance dated 2 November 1945 governing entry and sojourn of aliens and establishing the National Immigration Office, as amended by the Act of 11 May 1998.

Prime Minister's circular dated 1 March 1993 on extension of the departmental coordinating units on action against racism, xenophobia and anti-Semitism.

Minister of the Interior's circular dated 12 July 1993 on departmental coordinating units on action against racism, xenophobia and anti-Semitism.

Minister of the Interior's circular dated 21 July 1995 on action against racism, xenophobia and anti-Semitism.

Minister of the Interior's circular dated 10 December 1996 on the European Year against Racism.

Minister of Justice's circular dated 16 July 1998 on action against racism and xenophobia.

Statistics on convictions for racial discrimination (source: court records).

Guide to anti-racist legislation (Ministry of Justice).

Act of 16 March 1998 on nationality.

Opinions of the National Consultative Commission on Human Rights on the bills on nationality and on entry and sojourn of aliens and asylum.

Institutional Act of 25 May 1998 defining the conditions under which article 88-3 of the Constitution, on exercise by citizens of the European Union resident in France other than French nationals of the right to vote and stand as candidates in municipal elections, is applicable, and incorporating Directive 94/80/CE dated 19 December 1994 [into French law].

Act of 29 July 1998 on action to prevent exclusion.

Document from the Agency for the Development of Intercultural Relations on action to combat racism and discrimination.

Last three reports of the National Consultative Commission on Human Rights: 1995, 1996 and 1997.

---